

To: Wilson, Wenona[Wilson.Wenona@epa.gov]; Hladick, Christopher[hladick.christopher@epa.gov]
Cc: McGrath, Patricia[mcgrath.patricia@epa.gov]; Opalski, Dan[Opalski.Dan@epa.gov]; Allnutt, David[Allnutt.David@epa.gov]; Detwiler, Susan K.[detwiler.susan@epa.gov]
From: Fordham, Tami[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=347C9FF04ED340568194C316FD05FA18-FORDHAM, TAMI]
Sent: Tue 7/30/2019 7:02:08 PM (UTC)
Subject: FW: EPA withdraws 2014 Pebble Mine Clean Water Act 404(c) Proposed Determination

Please see the request below.

From: Courtenay Carty <courtenay@curyungtribe.com>

Sent: Tuesday, July 30, 2019 11:00 AM

To: Fordham, Tami <Fordham.Tami@epa.gov>; fwoods@bbna.com; **Ex. 6 Personal Privacy (PP)**

Ex. 6 Personal Privacy (PP)

Cc: Skadowski, Suzanne <Skadowski.Suzanne@epa.gov>; Gay, Santana <Gay.Santina@epa.gov>; Herbst, John <herbst.john@epa.gov>

Subject: EPA withdraws 2014 Pebble Mine Clean Water Act 404(c) Proposed Determination

Thank you Tami for the notification.

Please consider this email Curyung's formal request for government-to-government consultation with the EPA on this action. It is unfortunate that this action was taken without any formal tribal consultation process.

There is a delegation of Curyung Chiefs, along with myself, here in Anchorage this week for the Pebble EIS Technical Meetings. If at all possible, we could be available to meet in person this week and invite those in Dillingham to call-in. Please let us know if this is a possibility. Our best availability would be midday Thursday but we can be flexible to make a meeting happen if that time does not work for EPA.

Quyana,
Courtenay

Courtenay Carty
Tribal Administrator
Curyung Tribal Council
PO Box 216 - 715 Seward Street
Dillingham, AK 99576
907-842-2384
907-842-4510 fax

----- Original Message -----

From: "Fordham, Tami" <Fordham.Tami@epa.gov>

To: "Fordham, Tami" <Fordham.Tami@epa.gov>

Cc: "Herbst, John" <herbst.john@epa.gov>, "Gay, Santana" <Gay.Santina@epa.gov>, "Skadowski, Suzanne" <Skadowski.Suzanne@epa.gov>

Date: July 30, 2019 at 10:34 AM

Subject: FW: EPA withdraws 2014 Pebble Mine Clean Water Act 404(c) Proposed Determination

Good Morning:

Sharing today's news release from EPA's Headquarters office in Wash. DC. If you have any questions or need any more information about this announcement, please email press@epa.gov.

Link to a pre-publication notice of the withdrawal of the 2014 Pebble Mine Clean Water Act 404(c) Proposed Determination:

<https://www.epa.gov/bristolbay/notification-decision-withdraw-proposed-determination-restrict-use-area-disposal-site>

Link to EPA and Corps of Engineers letters regarding the Pebble Mine Clean Water Act 404(q) permit review process:

<https://www.epa.gov/bristolbay/epas-comments-us-army-corps-engineers-draft-section-404-permit>

Thank you,

Tami

Tami Fordham, Deputy Director

Alaska Operations Office

EPA Pacific Northwest and Alaska Region

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Anchorage, AK 99513

(907) 271-1484

[epa.gov](https://www.epa.gov) | [epa.gov/region10](https://www.epa.gov/region10)



From: EPA Press Office <press@epa.gov>

Sent: Tuesday, July 30, 2019 1:53 PM

Subject: EPA Withdraws Outdated, Preemptive Proposed Determination to Restrict Use of the Pebble Deposit Area as a Disposal Site - Preview



EPA Withdraws Outdated, Preemptive Proposed Determination to Restrict

SEATTLE (July 30, 2019) - Today, U.S. Environmental Protection Agency (EPA) Region 10 Administrator Chris Hladick withdrew the 2014 Proposed Determination issued under section 404(c) of the Clean Water Act (CWA) for the use of the Pebble Deposit Area in Southwest Alaska as a disposal site associated with mining of the deposit.

“After today’s action EPA will focus on the permit review process for the Pebble Mine project,” **said Region 10 Administrator Chris Hladick**. “The agency has worked closely with the Army Corps to engage with stakeholders and the public on this issue, which has resulted in an expansive public record, including specific information about the proposed mining project that did not exist in 2014.” By withdrawing the 2014 Proposed Determination, which was issued preemptively and is now outdated, the agency can continue its focus on fulfilling its responsibilities under the Clean Water Act to work with the Army Corps to review the permit.”

Today’s action does not approve Pebble’s permit application or determine a particular outcome in the Corps’ permitting process. Instead, it allows EPA to continue working with the Corps to review the current permit application and engage in the National Environmental Policy Act (NEPA) process.

“Region 10’s decision restores the proper process for 404(c) determinations, eliminating a preemptive veto of a hypothetical mine and focusing EPA’s environmental review on an actual project before the Agency,” **EPA General Counsel Matthew Z. Leopold**.

EPA Region 10 provided the Corps with detailed comments to its Draft Environmental Impact Statement (DEIS) and permit notice on July 1, 2019, and EPA looks forward to continuing its work with the Corps and the other cooperating agencies on the next steps in the permit review process.

Additional information: <https://www.epa.gov/bristolbay>.

Background

In July 2014, EPA Region 10 issued a Proposed Determination under CWA section 404(c) to restrict the use of the Pebble Deposit Area as a disposal site for dredged or fill material associated with mining the deposit. The Proposed Determination was based on three hypothetical scenarios for the mine site, each of which was different than the permit application submitted to the Corps for review in December 2017. Since 2014, there have been significant developments, including a lawsuit challenging the EPA’s process for developing the 2014 Proposed Determination and a related settlement, the permit application submitted by Pebble to the Corps, additional direction from the former EPA Administrator in January 2018, and a 1,400-page Draft Environmental Impact Statement (DEIS) and permit notice issued by the Corps.

In July 2017, EPA Region 10 published a proposal to withdraw the 2014 Proposed Determination. The notice opened a three-month-long public comment period, during which the EPA held two public hearings in the watershed area and consulted with federally recognized tribal governments and Alaska Native Claims Settlement Act Regional and Village Corporations with lands in the watershed. In December 2017, PLP submitted a CWA section 404 permit application to the Corps that proposes to develop a mine in the Pebble Deposit Area. The Corps then

invited relevant federal and state agencies, including the EPA, to cooperate on the development of the DEIS under NEPA. The Corps released a DEIS for public comment in February 2019; this public comment period closed on July 1, 2019.

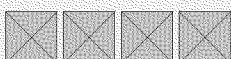
In January 2018, EPA announced that it was suspending the withdrawal proceeding and leaving the 2014 Proposed Determination in place at that time pending further action by the Agency.

In June 2019, EPA General Counsel Matthew Z. Leopold, acting pursuant to a delegation of authority from the EPA Administrator, directed Region 10 to resume its consideration whether to withdraw the 2014 Proposed Determination. He also directed the Region to reconsider its previous statement that it would seek additional public comment on the 2014 Proposed Determination, in light of the ample opportunity for public comment previously provided and the public comment opportunity on the DEIS and permit notice.

On July 1, 2019, Region 10 submitted to the Corps two sets of comments, totaling more than 150 pages, regarding the Corps' DEIS and permit notice. The Region also took the first step under the elevation procedures established between the EPA and the Army in a 1992 memorandum to work towards resolving issues EPA identified in the permit notice.

This action removes the Agency's outdated, preemptive proposed veto of the Pebble Mine and restores the well-understood permit review process. EPA Region 10 reached this conclusion based on two primary reasons. First, the Corps' DEIS includes significant project-specific information that was not accounted for in the 2014 Proposed Determination and, based on that information, the Corps has reached preliminary conclusions that in certain respects conflict with preliminary conclusions in the 2014 Proposed Determination. The now-five-year-old Proposed Determination does not grapple with the currently available expansive record, including specific information about the proposed mining project that did not exist in 2014. Second, other processes are available and better-suited for EPA to resolve issues with the Corps as the record develops; specifically, the well-understood elevation process under CWA section 404(q) and the NEPA process. EPA believes these processes should be exhausted prior to any decision by EPA, based upon all information that has and will be developed, to exercise its section 404(c) authority. A detailed explanation of EPA's decision is available in the notice signed today by EPA's Region 10 Administrator, which will be published in the Federal Register.

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U.S. Environmental Protection Agency
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